

that he has a permanent partial general disability somewhere in the range of his 15 to 25 percent whole body functional impairment rating.

Because “medical science cannot state with specific certainty what caused the blood clot to dislodge and clog the coronary artery,” the respondent and its insurance carrier argue that claimant failed to prove that his work activities precipitated the infarction. Therefore, they contend that the Award denying benefits should be affirmed.

The only issues before the Appeals Board on this appeal are:

1. Did claimant’s work activities precipitate the myocardial infarction?
2. If so, is the heart attack compensable under the Workers Compensation Act?
3. If the heart attack is compensable, what is the nature and extent of injury and disability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. While working for ADM Milling on January 28, 1992, Mr. Billy G. Love had a myocardial infarction after climbing a 66-foot ladder. At the time of the incident, Mr. Love was 57 years old. He had worked at the Arkansas City, Kansas, flour mill since 1955.
2. Mr. Love was responsible for keeping the mill operating as smoothly as possible. Although his job as a miller did not regularly require strenuous physical activity, on the day of the infarction Mr. Love had to climb the 66-foot ladder because the lift that he normally rode was being repaired.
3. When he was much younger Mr. Love had, on several occasions, climbed ladders to the top of the elevator. But Mr. Love’s job as a miller did not require him to climb tall ladders and the only time that he had climbed the 66-foot ladder in question was the day of the infarction. Before the heart attack, it had been approximately 20 to 25 years since he had climbed a ladder that tall.
4. Immediately after climbing the ladder, Mr. Love began experiencing symptoms in his chest and began having difficulty raising his arms. Knowing something was wrong, he then went to the break room where he became nauseated and passed out. An ambulance was called and Mr. Love was taken to a local hospital emergency room.
5. When he arrived at the hospital, Mr. Love was given medication to dissolve a blood clot that was blocking a coronary artery. At the hospital, Mr. Love was treated by his

personal physician, Dr. David A. Schmeidler. After the heart condition was stabilized, Dr. Schmeidler referred Mr. Love to Wichita cardiologist Dr. Lyle F. Zepick for treatment.

6. In Wichita, Mr. Love underwent a successful coronary angioplasty. After recovering from that procedure, Dr. Zepick released Mr. Love to return to work in March 1992. Mr. Love returned to ADM Milling and continued to work at the mill when he testified at the February 1999 regular hearing. Because he has returned to his regular job duties, Mr. Love limits the request for permanent partial general disability to his functional impairment rating.

7. Before the infarction, Mr. Love smoked approximately a carton and a half of cigarettes per week. He started smoking when he was either seven or eight years old. According to Mr. Love, in the 1960s he was diagnosed as being borderline diabetic. He was also overweight, had a family history of heart disease, and had a personal history of chronic coronary artery disease. In short, Mr. Love had several risk factors for myocardial infarction.

8. Dr. Schmeidler, a family practice physician, testified that he does not believe the climbing incident precipitated the heart attack. Further, the doctor does not believe that Mr. Love sustained any permanent impairment or disability from the heart attack as he is now in the same, if not better, physical condition that he was in before the blockage was removed. The doctor believes that Mr. Love has returned to the same physical condition and abilities that he had before the infarction. But the doctor stated that he did not use the coronary artery disease section of the *AMA Guides to the Evaluation of Permanent Impairment (Guides)* to rate Mr. Love and was not expressing an opinion about whether Mr. Love had an impairment according to the Guides.

9. Dr. Zepick, who is board certified in cardiovascular diseases, testified that the ladder climbing incident "in large part . . . was not causative" of the infarction. But that opinion is somewhat contrary to the one expressed in the doctor's March 17, 1993 letter to Mr. Love's attorney. In that letter Dr. Zepick wrote that he thought that Mr. Love's work may have been a precipitating factor. The doctor wrote, in part:

As to the conjecture that his work caused his myocardial infarction, I think it is doubtful that this is the case as the other factors are more likely causative. Secondly if the work precipitated the myocardial infarction, this is difficult to say. Patients can have myocardial infarctions, both at rest and during heavy physical work. In fact, it is not unusual for most infarctions to incur [sic] when people are not exerting heavily.

Angina pectoris has been known to be precipitated by exertion but it has always been difficult to prove that myocardial infarction itself was precipitated by similar exertion.

I think the circumstantial evidence would indicate some precipitating factor here. I have no other data to support this, however, was causative in his underlying coronary artery disease.

I also must admit that he could have similarly had the same course of events had he been off work on the Saturday morning and climbing a set of stairs at home or being relatively in active [sic]. I am sorry I cannot be more helpful. (Emphasis added.)

Dr. Zepick also testified that he did not have enough scientific information to render an opinion of whether the ladder climbing incident precipitated the heart attack. The doctor stated:

I think the basic information that I lack is the medical science behind both coronary artery disease and myocardial infarctions. The majority of myocardial infarctions actually occur at rest, and on a statistical basis, some people will be exerting when they have their heart attack. So to say that either exercise is causative or etiologic or a precipitating factor would go against the known history of the disease.¹

According to Dr. Zepick, it was merely coincidental that Mr. Love's heart attack occurred immediately after climbing the ladder. Dr. Zepick did not render an opinion of whether Mr. Love had sustained a physical impairment as a result of the heart attack.

10. Mr. Love hired board certified cardiothoracic surgeon Gary S. Benton, M.D., to render an opinion of whether the physical exertion of climbing the 66-foot ladder would have precipitated the heart attack and, if so, whether Mr. Love had a physical impairment according to the *Guides*. For purposes of formulating his opinions, Dr. Benton requested Mr. Love to undergo a mugascan, a study that reveals how well the left ventricle is squeezing and information regarding blood flow. After obtaining the results from that test, the doctor determined that it was more probably true than not that the ladder climbing incident precipitated the myocardial infarction. When asked how the climbing incident precipitated the infarction, the doctor testified:

Well, it fits in the picture in the following sense. You know, if this gentleman was fairly sedentary, i.e., wasn't a jogger or on some routine exercise program, which as I recall he wasn't, to all of a sudden do physical activity that you are not accustomed to doing could precipitate a state where you develop a myocardial infarction because the demand of the muscle exceeds

¹ Deposition of Lyle F. Zepick, M.D., March 29, 1999; p. 9.

the blockage in the artery. And in looking at him, that was my opinion on kind of what happened that day acutely.²

. . .

I would say that that unusual activity that day probably contributed more than any other factors to his myocardial infarction; however, that's not to say that a week down the road doing something different unrelated to work that he wouldn't have had a myocardial infarction. I think he already had coronary disease. I guess that's what I keep saying over and over. He had a chronic problem that was exacerbated by acute activity that he wasn't used to. . . .³

According to Dr. Benton's interpretation of the *Guides*, Mr. Love has a 15 to 25 percent whole body functional impairment due to the heart condition.

11. The Appeals Board finds that Dr. Benton's opinions are the most persuasive. According to Dr. Zepick's analysis, due to a lack of scientific information he would not find any heart attack precipitated by strenuous physical activity. The Appeals Board finds that climbing a 66-foot ladder, or approximately 5 stories, placed unusual stress and exertion on Mr. Love's body. Further, the Board finds that it is more probably true than not that the unusual exertion of the climbing incident precipitated the heart attack. Finally, the Board finds that Mr. Love has a 20 percent whole body functional impairment as a result of his heart condition.

12. According to Dr. Zepick, Mr. Love was unable to return to work until after their March 13, 1992 visit.

CONCLUSIONS OF LAW

1. Because the Appeals Board finds that the climbing incident precipitated the heart attack, the Award should be reversed to grant Mr. Love a 20 percent permanent partial general disability.

2. A heart attack is not compensable under the Workers Compensation Act unless the exertion that precipitated the heart attack was more than the worker's usual work. The Act reads:

Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the

² Deposition of Gary S. Benton, M.D., January 13, 1999; p. 23.

³ Deposition of Gary S. Benton, M.D., January 13, 1999; p. 32.

work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.⁴

Under the facts presented, the Appeals Board concludes that climbing the 66-foot ladder required more exertion than was required in Mr. Love's usual work activities. Therefore, the heart attack is compensable under the Workers Compensation Act.

3. There is a presumption that the worker has no work disability if the worker returns to work for wages comparable to the average weekly wage that the worker was earning at the time of the injury.⁵ As indicated above, Mr. Love returned to his job as a miller and requests his permanent partial general disability to be based upon his functional impairment rating, which the Appeals Board has determined to be 20 percent. Therefore, Mr. Love is entitled to an award for a 20 percent permanent partial general disability.

4. Mr. Love is entitled to receive temporary total disability benefits from January 29, 1992, through March 13, 1992, when Dr. Zepick released him to return to work.⁶ During that period, Mr. Love was receiving medical treatment and was kept off work by his treating physicians.

5. Mr. Love is entitled to receive medical benefits for the heart attack, including additional treatment upon proper application and approval of the Director.⁷ In addition, upon presentation of proof of payment, Mr. Love is entitled to receive up to \$350 in unauthorized medical benefits.⁸

AWARD

WHEREFORE, the Appeals Board reverses the June 28, 1999 Award and grants Mr. Love medical benefits, temporary total disability benefits, and permanent partial general disability benefits, as follows:

Billy G. Love is granted compensation from ADM Milling and its insurance carrier for a January 28, 1992 accident and resulting disability. Based upon an average weekly wage of \$667.04, Mr. Love is entitled to receive 6.43 weeks of temporary total disability benefits at \$289 per week, or \$1,858.27, followed by 408.57 weeks of benefits at \$88.94 per week,

⁴ K.S.A. 1991 Supp. 44-501(e).

⁵ K.S.A. 1991 Supp. 44-510e(a).

⁶ K.S.A. 1991 Supp. 44-510c.

⁷ K.S.A. 1991 Supp. 44-510.

⁸ K.S.A. 1991 Supp. 44-510(c).

or \$36,338.22, for a 20 percent permanent partial general disability, making a total award of \$38,196.49, which is all due and owing less any amounts previously paid.

Mr. Love is entitled to an award of medical benefits as set forth in paragraph 5 of the Conclusions of Law. Additionally, the Appeals Board adopts the remaining orders set forth in the June 28, 1999 Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Jeffery R. Brewer, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director